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# The Revolution You Won't See On TV

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## The Revolution You Won't See On TV

by Jeff Rasley  
November 24, 2002

The plaintiff and I stand at the counsel table as the black-robed judge intones, "Madam Foreman, has the jury reached a verdict?" A hush descends upon the courtroom. We have waited a long time for this moment--two years for the trial date followed by three days of testimony and argument. The litigants and the state have already spent a great deal of money for expert witnesses, court reporters, legal fees, court costs and jurors' compensation.

The verdict is pronounced, and my client wins the case. The judge releases the jurors, the other attorney shoots me a resentful look as he grabs his briefcase, and the defendant mutters obscenities under his breath.

Scenes like that one were once a standard part of my law practice. As a civil litigator, I handled several jury trials each year. I still have them scheduled almost every month, but I haven't tried a case in front of a jury in more than five years. That's because nowadays they are almost always settled by alternative dispute resolution (commonly known as mediation), a process in which a neutral third party directs negotiations as the plaintiff and the defendant attempt to reach a settlement. Even criminal cases--like the King brothers murder case in Florida--are being turned over to mediation.

I'm not surprised that lawyers and judges are looking for a new way to handle cases. The truth is, in 22 years of practice, I have never seen a jury trial end with both sides satisfied. The adversarial nature of the process ensures losers--and some of them are bad losers. Just last year, metal detectors were installed in our courthouse because of the increasing number of litigants who made threats against judges, their staffs and the attorneys. I've been threatened several times, once by a client's angry ex-husband who looked as if he was about to punch me in the nose.

While I don't miss walking out of a courtroom and wondering if I'll be assaulted, I do worry that the noble ideal of the American legal system--the pursuit of truth and justice--is being sacrificed for mere dispute resolution. As a trial lawyer, I am well aware that the system often fails to work as intended; it was common for my client and me to feel frustrated at the lumbering pace of litigation or anxious because we knew that turning the case over to a jury was a crapshoot. But even if the system falls short much of the time, it inspires us to strive for something more profound than the quickest, cheapest means to end disputes.

Despite my reservations, I'm the first to admit that mediation has made life easier for me and my clients. Consider a recent case. There was no long wait for a trial date; the mediator, the defense attorney and I pulled out our Daytimers and agreed to meet within the month. When the day arrived and my client, Lori (none of the names used are real), and I entered the conference room, the mediator, Doug, introduced us to Jim, the defendant's attorney, and Sue, the insurance adjuster. I presented Lori's case--she had suffered an injury when the defendant's car rammed hers. She described the accident and its aftermath, and I itemized the monetary damages, including the doctor bills, time off work, and pain and suffering. Our settlement demand was \$16,275. The other attorney presented his side--questioning whether Lori needed so many chiropractic visits--and concluded with an offer of \$2,000.

Doug escorted Sue and Jim into another room and began shuttle diplomacy. After two hours of exchanges, it was 11 a.m. and the negotiations had stalled. Doug was comforting and calm, assuring Lori that he believed her and encouraging her to "let out" her feelings in this protected environment. Then he left to work on Sue and Jim some more, returning with a final offer of \$8,750. If Lori didn't accept this, she'd have to take her chances with a jury, and pay expert witnesses \$2,000 of any damage award. Lori and I agreed to the offer and forestalled the risks, costs and delays of a trial. It was just noon when Doug reunited us with Jim and Sue. We all signed the settlement agreement and shook hands.

Compared with the climax of a jury trial, mediations like that one end not with a bang but a whimper. I don't really miss the drama of trying a case in court, though I do miss the rare moments of inspiration that came when I felt that the truth had been discovered and justice meted out. I can only hope that the popularity of dispute resolution proves we are evolving into a more cooperative society. Regardless, it's clear that the curtain is falling on the jury trial. It was a hell of a show.